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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,195	06/13/2001	Kelvin Brian Dickinson	J3544(C)	6049

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/880,195

Applicant(s)

DICKINSON ET AL.

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,7 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

Receipt of Request for Continued Examination and Amendments/Remarks received on 12/22/04 is acknowledged. Claims **1, 7, and 13** are pending in this application. Claims 2-6, 8-9, and 10-12 stand cancelled.

#### ***Request for Information***

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

In response to this requirement, please provide answers to each of the following interrogatories eliciting factual information:

The applicant has submitted XP 002180876 as pertinent art. XP contains a composition similar to the instant invention, however it does not disclose the weight percentages. Thus, the examiner requests the weight percentage of coconut oil and mineral oil in XP 002180876.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 7, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0546235 by itself.**

EP teaches a hair-restorer containing a mixture of castor oil, almond oil, olive oil, and coconut oil in equal proportions for application to the scalp. The criticality of the invention lies in the fact that at least three vegetable oils are utilized with the preference to coconut oil, olive oil, castor oil, and almond oil. EP teaches the use of the vegetable oils lies in the fact that vegetable oils are fatty acid glycerol esters. See page 3. Glycerol **and/or** paraffin oil (liquid paraffin or Vaseline oil) may be added. Glycerol is taught as a humectant and paraffin oil is taught as a diluent for the active substances contained in the vegetable oils. See abstract and page 5. The hair restorer stops hair loss, stimulates the growth of strong healthy hair and cares for protects the scalp. See page 3, lines 3-7.

The example teaches 1/6 parts of each castor oil, almond oil, olive oil, coconut oil, glycerol, and paraffin (liquid paraffin or Vaseline oil). See page 5, third paragraph. Thus, the composition contains 64% of vegetable oils.

EP's claim 1 is directed to a composition containing castor, almond, and olive oil in equal amounts. Claim 2 recites the additional use of coconut oil and claim 3 recites the additional use

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of glycerol **and/or** paraffin oil. Thus, the combination of the claims yield a composition that either contains 1) castor oil, almond oil, coconut oil, olive oil, and glycerol in equal proportions or 2) castor oil, almond oil, coconut oil, olive oil, and paraffin oil in equal proportions or 3) castor oil, almond oil, coconut oil, olive oil, paraffin oil, and glycerol in equal proportions.

Although EP suggests the use of paraffin oil or glycerol, the example utilizes both glycerol and paraffin oil, thus EP exemplifies 16% of paraffin oil and it does not exemplify the instant lower limit of 20% paraffin oil.

However, is deemed obvious to one of ordinary skill in the art at the time the invention was made to look to the prior art conditions and remove glycerol in the composition to yield the instant composition with the instant range of all components. One would have been motivated do so since firstly EP suggests that the composition may contain glycerol or paraffin oil with the critical components of olive, castor, almond, and coconut oil. Therefore, a skilled artisan would expect similar results by removing glycerol from the composition as suggested by EP. Thus, if one removed glycerol from the composition, one would obtain the instant composition in instant amounts. For instance, EP teaches the preference of components in equal amounts. If glycerol is removed from the example in accordance to one suggested embodiment of EP, one would obtain a composition with 20% coconut oil, 20% olive oil, 20% castor oil, 20% almond oil, and 20% paraffin oil in.

Note that firstly liquid paraffin is another name for mineral oil, which has 10 to 18 carbons and light oils (hydrocarbons) are considered to have C12 to C20. Therefore, EP implicitly teaches a light mineral oil. Note the art of interest: Grant & Hack's Chemical Dictionary, Fifth Edition, 1987, pages 422 and 436. Furthermore, since the prior art teaches a

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light mineral oil, it is the examiner's position that it would implicitly have the same viscosity absent evidence to the contrary.

***Response to Arguments***

Applicant argues that EP does not teach a light mineral oil.

Firstly, the examiner points to page 5 the instant specification wherein the applicant states that light mineral oil that has the instant viscosity has a carbon length of 10-28 and 12-20. The examiner again cites page 436 of Grant & Hackh's Chemical Dictionary, Fifth Edition, 1987, pages 422 and 435-436, wherein paraffin oil is defined as C10 to C18. Thus, EP implicitly teaches light mineral oil.

Moreover for arguendo, even if EP did not teach a light mineral oil, the examiner points out that this is an obvious parameter since one would have been motivated to utilize the mineral oil of choice depending on the desired viscosity. For instance, if one wanted to increase the viscosity, one would use heavy mineral oil. Conversely, if one wanted to have a low viscosity composition, one would utilize light mineral oil.

Applicant argues that the light mineral oil provides a better feel and enhanced penetration of the hair fiber. Applicant's argues the light mineral oil is less greasy, however US Patent 4904471 states that light mineral oil is **conventionally** used in hair treatments but it is not absorbed easily into the hair or skin and tends to sit on the surface of the skin, leaving a greasy feel. Thus, without evidence comparing light versus heavy mineral oil, arguments and assertions of unexpectedness cannot overcome an obviousness rejection.

With regard to applicant's assertion that glycerol is contained in an amount more than 5% and thus EP cannot be used as prior art since it utilizes 16.7%, the examiner points out that this is

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a preferred embodiment. It should be firstly noted that examples or preferred embodiments are not a teaching away from the broader or obvious disclosure. See *In re Susi*. EP clearly teaches the use of either paraffin oil or glycerol, thus glycerol may be eliminated from the entire composition with the expectation of similar results.

**Claims 1, 7, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0546235 in view of Pavlin (5,998,570) in further in view of Jones (5,116,607).**

The teachings of EP have been set forth above. EP teaches a hair restorer composition containing castor oil, almond oil, olive oil, and coconut oil in equal proportions for application to the scalp. Glycerol and/or paraffin oil (liquid paraffin or Vaseline oil) may be added.

Assuming that EP's paraffin oil does not have the instant viscosity, the examiner relies on Pavlin to cure this deficiency.

Pavlin teaches personal care products with a clear carrier. Pavlin teaches the state of the art where there is a preference for transparent formulations. See column 1, lines 53-55. Further, Pavlin teaches the use of mineral oil and the preference for light mineral oil since it is less viscous than heavy mineral oil, colorless and transparent. See column 15, lines 45-65.

Jones teaches a hair dressing for pliable, softer hair. Jones teaches the use of a combination of oils such as castor oil, coconut oil, etc with light petrolatum as the predominant oil. See column 1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to look to the teaching so Pavlin and utilize the instant light mineral oil. One would have been motivated to use light mineral oil versus heavy mineral oil since light mineral oil is less viscous, colorless, and transparent as taught by Pavlin. Thus, a skilled artisan would have

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been motivated to use light mineral oil not only if he/she desired a low viscosity composition, but also for its colorless property.

Further, one would have been motivated to look to Jones since Jones teaches the state of the art wherein it is known to use light mineral oil is hair dressing composition.

**Claims 1, 7, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1035855 entire document optionally in view of Pavlin (5,998,570).**

DE teaches hair oil containing 50% olive oil, 40% paraffin oil, 9% isopropylmyristate, 0.5% N-acetylcysteine isopropylester, and 0.5% N-salicylic methionine isopropylester. It should be noted the terminology hair oil, is an implicit disclosure of the instant methodology.

DE does not teach the instant 60% of the first oily component or the viscosity of the paraffin oil.

It is deemed obvious to one of ordinary skill in the art at the time the invention was made to manipulate the parameters of the prior art and utilize 60% of the instant oil. One would have been motivated to do so as part of the routine experimentation process to find to the optimal working range. Generally differences in concentrations does not support patentability of subject matter encompassed by the prior art absent the criticality of the ranges.

Moreover, it is considered obvious for a skilled artisan to utilize the mineral oil of choice depending on the desired viscosity. For instance, if one wanted to increase the viscosity, one would use heavy mineral oil. Conversely, if one wanted to have a low viscosity composition, one would utilize light mineral oil.

Pavlin teaches personal care products with a clear carrier. Pavlin teaches the state of the art where there is a preference for transparent formulations. See column 1, lines 53-55. Further,



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Pavlin teaches the use of mineral oil and the preference for light mineral oil since it is less viscous than heavy mineral oil, colorless and transparent. See column 15, lines 45-65.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to look to the teaching so Pavlin and utilize the instant light mineral oil. One would have been motivated to use light mineral oil versus heavy mineral oil since light mineral oil is less viscous, colorless, and transparent as taught by Pavlin. Thus, a skilled artisan would have been motivated to use light mineral oil not only if he/she desired a low viscosity composition, but also for its colorless property.

#### ***Art of Interest***

Grant & Hackh's Chemical Dictionary, Fifth Edition, 1987, pages 422 and 435-436.

GB 824,353 to Irma Andersin is cited as art of interest since Andersin discloses the state of the art. Andersin states, "It is well known to add to hair oils, which are composed essentially of mineral and/or vegetable oil including petroleum oils, olive oil, almond oil, and castor oil."

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

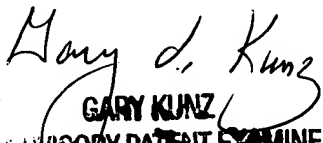
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sharmila S. Gollamudi  
Examiner  
Art Unit 1616

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**GARY KUNZ**  
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